No. 96-1625

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

RICHARD DELK and HAROLD RAMSEY,
on behalf of themselves and as representative
of the class herein defined,
Petitioners,

v.

FORD MOTOR COMPANY; FORD-UAW SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT UAW'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Petitioners seek this Court's review based on the following stated questions:

> (1) Whether a defined trustee * under an ERISA-governed plan may rely upon actions performed by non-fiduciaries in order to sustain the fiduciary standard of care?
>
> (2) Whether a corporate fiduciary may rely upon its ignorance of its own conduct in demonstrating its proper discharge of its fiduciary duty?

Respondent, UAW contends that the above-stated questions cannot properly be brought in this Petition because Petitioners did not previously raise these questions below, and therefore they were neither argued to nor decided by the United States Court of Appeals for the Sixth Circuit.

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* The defined trustees of the Ford-UAW Supplemental Unemployment Benefit Plan were manufacturers National Bank of Detroit and Continental Illinois Bank, N.A., neither of which has been identified or named as a respondent in this Petition.

PARTIES TO THE PROCEEDING

The parties to this proceeding are as named on the caption to the Petition and in this Brief In Opposition.

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RESPONDENT UAW'S BRIEF IN OPPOSITION

Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter "UAW"), respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the September 16, 1996, Opinion Affirming rendered by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

This is an appeal of the Opinion Affirming of the United States Court of Appeals for the Sixth Circuit: *Richard Delk and Harold Ramsey, on behalf of themselves and as representatives of the class herein defined v. Ford Motor Company; Ford-UAW Supplemental Unemployment Benefit Plan; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America-UAW, Case No. 94-6259, Opinion filed September 16, 1996.* The original Opinion was issued by the United States District Court for the Western District of Kentucky at Louisville granting judgment to the Defendants/Respondents after trial, Civil Action No. C-82-0208-L(M), entered August 26, 1994.

JURISDICTION

Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES OR OTHER PROVISIONS INVOLVED

1. Employee Retirement Income Security Act, 29 U.S.C. §§ 1104, 1132.

2. Trade Act of 1962, 19 U.S.C. §§ 2271, *et seq.*

STATEMENT OF THE CASE

Petitioners claim Respondents Ford Motor Company and Ford-UAW Supplemental Unemployment Benefit Plan ("SUB Plan") breached their fiduciary duty in administering the SUB Plan which was and is part of the Collective Bargaining Agreement between Ford Motor Company and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America-UAW. During the late 1970's and early 1980's, the American automobile industry was experiencing a financial crisis due, in part, to foreign competition. Respectfully, the Petition does not adequately or accurately summarize the evidence head at trial of this matter. The

Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, incorporates by reference the STATEMENT OF THE CASE set forth in Respondents Ford Motor Company and Ford-UAW Supplemental Unemployment Benefit Plan's Brief In Opposition which fairly, accurately and adequately does.

REASONS FOR DENYING THE PETITION

The District Court ruled and United States Court of Appeals for the Sixth Circuit affirmed that Petitioners have not proven a breach of fiduciary duty and the District Court applied the correct standards of review. This Court should deny this Petition for Writ of Certiorari for two reasons. First, the questions Petitioners attempt to have this Court address were never presented to or decided by the Court of Appeals. Second, there are no conflicts among the circuits on the issues presented nor are there any "compelling reasons" that would justify a Writ of Certiorari. Sup. Ct. R. 10.

Respondent UAW is a named party to this proceeding but is not a defined trustee under an ERISA-governed plan, nor, a corporate fiduciary. Neither question presented for review relates to any action or fiduciary duty of Respondent UAW. Accordingly, Respondent UAW supports, endorses and adopts the REASONS FOR DENYING THE PETITION set forth by Respondents Ford Motor Company and Ford-UAW Supplemental Unemployment Benefit Plan in their Brief In Opposition.

CONCLUSION

Respondent, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America-UAW, respectfully requests that the Petition be denied.

Respectfully submitted,

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